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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/547,336

09/01/2005

Kalman Bolla

9007-1014

3109

466 7590 07/11/2007  
YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

LEWIS, KIANDRA CHARLE

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

ED

**Office Action Summary**

Application No.

10/547,336

Applicant(s)

BOLLA, KALMAN

Examiner

Kiandra C. Lewis

Art Unit

3772

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-19, 21, 22 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 20, 23 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/1/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

2. The substitute specification filed 9/01/2005 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: a marked-up copy of the substitute specification has not been supplied (in addition to the clean copy).

### ***Response to Amendment***

3. As per preliminary amendment 09/01/2005, original claims 1-14 have been cancelled and claims 15-27 have been added for the purpose of examination.

4. The original abstract as filed will be replaced with new abstract filed with the preliminary amendment.

### ***Claim Objections***

Art Unit: 3772

5. Claim 15 is objected to because of the following informalities: the abbreviations "resp." is not proper in the claim and should be spelled out. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 15, 16, 21, 22, 25 and 26 are rejected under 35 U.S.C. 102(e) as being unpatentable by Rolnick et al. US 6,971,995.

As to claim 15, Rolnick et al. disclose a device (fig. 1) characterized in that the immobilizing device comprises a flat splint element (2) being rigid itself covering a large portion of the fracture area and that the side of immobilizing device facing the body is provided with an appropriate adhesive layer (col. 3, lines 66- col. 4, line 1) for adhering the immobilizing device to the body.

As to claim 16, Rolnick et al. disclose that the splint can be fitted to the outside contour of the thorax without any additional aid or tool (via the adhesive col. 3, lines 66- col. 4, line 1).

As to claim 21, Rolnick et al. disclose that the splint element may be provided with a covering (col. 4, lines 12-14).

As to claim 22, Rolnick et al. disclose that the splint element may contain a foam (col. 3, lines 64-66).

As to claims 25, Rolnick et al. disclose that device may comprise an analgesic agent (col. 5, lines 21-26).

As to claim 26, Rolnick et al. disclose the analgesic agent to be in the form of a compress.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rolnick et al. US 6,971,995.

As to claims 17-19 and 27, Rolnick et al. substantially disclose the device as claimed, see rejection to claim 15 above, Rolnick et al. further disclose that the splint members are elastomeric, therefore it would have been obvious to one having ordinary

Art Unit: 3772

skill in the art at the time of the invention to use a plastically deformable device for the purpose of making it conformable to the body and increasing pain comfort (col. 5, lines 1-14). As to the plastically deformable material being a plastic or metal plate it would have been obvious to one having ordinary skill in the art to use either material because the applicant has not stated any criticality to any material by stating that they are used for a particular purpose, solve a stated problem, or provides an advantage over another material. Therefore it would have been an obvious matter of design choice to use plastic or metal in the device of Rolnick et al. for making the most comfortable splint device.

As to claim 27, Rolnick et al. do not expressly state that the adhesive layer is provided with the analgesic agent but it would have been obvious to one having ordinary skill in the art at the time of the invention to have the agent be on the adhesive layer so that it can contact the patient and increase pain relief (col. 5, lines 21-25).

#### ***Allowable Subject Matter***

11. Claims 20, 23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,602,214 and US 6,516,804.

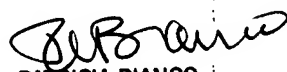
Art Unit: 3772

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiandra C. Lewis whose telephone number is 571-272-7517. The examiner can normally be reached on Mon-Thurs 9AM-6PM and alternating Fridays 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCL

  
PATRICIA BIANCO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
7/18/07